



February 2, 2005

Follow-up questions regarding Amusement Devices

Alcohol Permit Suspensions for 99B.10 Violations

Three businesses had their liquor license suspended for a period of time due to gaming related violations between 4/1/04 & 2/1/05. These are:

1. Alley Bowl & Rookies Bar & Grill in Osceola - settled 1/13/05 (7 days & \$1000 fine)
2. The Irishman Pub in Indianola - settled 1/21/05 (7 days & \$1000 fine)
3. Mo's One More Lounge in Washburn - settled 8/31/04 (7 days & \$1000 fine)

It should be noted that several cases were dismissed and others are pending the hearing process.

Enforcement of 99B.10

Previous 99B.10

Prior to the new legislation enacted over the last couple of years it was customary for us to refer violations of 99B.10; (ie; devices with knock-off switches, meters, payments in cash) to both the county attorney and to the Alcoholic Beverage Division-- to the county attorney for forfeiture of the device and consideration of criminal charges (it was a class D felony if charged with 725.16) and to ABD for administrative sanctions; ie; liquor license suspensions.

The reality of the situation was we could seldom identify the distributor/owner of the device which was necessary for criminal charges to be filed. Even if identified, county attorneys were reluctant to prosecute for the following reasons given: (1) felony too severe for the offense (2) ABD admin. sanctions plus criminal charges created potential double jeopardy (3) case is low priority vs. sex offenses, homicides, thefts, drug cases, etc.

For these reasons the normal procedure was for us to pursue ABD administrative actions and move to forfeit the machines. This is a process that worked well as the bar owner was penalized in loss of sales and the device owner with loss of machine. At that time we didn't have a good handle re knowledge of who the distributors were and whether they in fact were being appropriately penalized for their violations. Therefore, we (and DIA) participated in proposed registration laws.

Amended 99B.10

Under amended 99B.10 we still refer the actions for any 99B.10 violation (now including registration violations) to the county attorney, ABD as before, and also to DIA for administrative sanctions re: registration violations. The county attorney reviews the case (as before) to determine if criminal charges are appropriate (now a serious misdemeanor). Forfeiture actions are usually filed, however we have not seen any criminal charges filed on device owners/distributors.

We, as officers, do not file these charges. We leave the facts of the case via the case report with the county attorney for his/her determination on if and what charges should be filed. In relation to their major case loads and available resources, these cases are likely of low priority.

We did a sting in April 2004 in 19 counties after being assured of prosecutorial and/or forfeiture action support by those 19 county attorneys. Most have been great to work with and we have had some success. However, not all have supported action in these cases. In one county, we have returned a number of machines by court order without even having a hearing. Again, due to heavy case loads of major cases and lack of resources, some county attorneys are reluctant to pursue these violations.

At this time, we are working with the new legislation, new identification methods to determine device owners/distributors, and new officers doing this kind of work. We now have a more visible amusement device industry that has seen a threefold increase in enforcement presence. As these officers develop positive working relations with county attorney offices, given good cases, we will undoubtedly see criminal charges being filed.